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Attorneys for Defendant
 MORIS FLORES

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. CR 08 0730 WHA
)	
Plaintiff,)	
)	DEFENDANT'S <i>EX PARTE</i>
vs.)	MOTION TO STRIKE
)	UNTIMELY SENTENCING
)	MEMO OR TO CONTINUE
)	SENTENCING HEARING
MORIS FLORES,)	
)	[Crim. Local Rule 47-3]
Defendant.)	
_____)	

Defendant Moris Flores hereby moves the Court, by and through counsel and on an *ex parte* basis pursuant to Criminal Local Rule 47-3, to strike the government's sentencing memo filed on Tuesday, November 29, 2011 at approximately 8 p.m., the night before the scheduled sentencing hearing. In the alternative, defendant Flores moves the Court to continue Mr. Flores's sentencing date, to permit adequate time under the local rules to review the government's factual and legal arguments, and to respond to the memorandum in writing

The government's memo was filed 12 hours (all of them being dark) prior to the sentencing hearing, during the night before the sentencing. The local rules for this judicial district require that a sentencing memorandum be filed and served 4 days after the filing of the final Presentence Report. See Crim. Local Rule 32-5(b). The final ("revised") Presentence Report concerning Mr. Flores was filed on November 18, 2011. Any response to a sentencing

1 memorandum must be filed no later than 4 days after the party receives the opponent's
2 sentencing memorandum. See Crim. Local Rule 32-5(c). Mr. Flores' sentencing memorandum
3 was filed on November 23, 2011. The intent of the rule is clearly to give a party at least 4 days
4 to prepare a response. The government has had much more time than that, and has generously
5 and most fairly left the defendant the middle of the night to respond. The government's memo is
6 untimely with respect to both the letter and the spirit of the local rules and, most importantly,
7 does not provide adequate time for Mr. Flores to review the government's factual or legal
8 arguments and to file a responsive memorandum, or prepare properly for the hearing on a
9 potential life sentence case..

10 This motion is being made on an *ex parte* basis pursuant to Criminal Local Rule 47-3(a)
11 because there is not sufficient time for Mr. Flores to make a properly noticed motion to strike or
12 continue.

13 I declare under penalty of perjury that the factual representations made in this motion are
14 true and correct, and as to those representations made on information or belief, I believe them to
15 be true. Executed this 29th day of November, 2011, well after dark, at San Francisco, California.

16
17 Respectfully Submitted,

18 /s/ Mark Rosenbush

19 MARK ROSENBUSH
20 Attorney for Defendant
21 MORRIS FLORES
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